

Exhibit 20 Supplement Mitchell Deposition

Clifton Mitchell

Pages: 36, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 52, 55,
57, 58, 63, 64, 65, 66, 67, 68, 74, 76, 77, 78, 80, 83, 84,
86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100,
101, 103, 104, 108, 110, 111

Dated: March 25, 2021

Clifton Mitchell

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____	:
	:
Charles Joseph Freitag, Jr., as	:
Administrator of the Estate of	:
Charles Joseph Freitag, Sr.,	:
	:
Plaintiff,	:
	:
V.	:
	:
Bucks County; Primecare Medical,	:
Inc.; et al,	:
	:
Defendants.	:
_____	:

Thursday, March 25, 2021

VIDEOTAPED ZOOM DEPOSITION OF:

CLIFTON MITCHELL,

Called for oral examination by counsel for the plaintiff, pursuant to notice, before Ramona L. Devlin, of Kaplan, Leaman & Wolfe, a Notary Public, in and for the Commonwealth of Pennsylvania, beginning at 9:33 a.m., when were present on behalf of the respective parties.

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1 you have to address questions of discipline for
2 officers, if you can estimate?

3 A It varies. It varies from the
4 standpoint of whether it would be the attendance
5 issues and/or some other issues. You know, it is
6 just a normal course of business.

7 Q Okay. I identified as an issue in my
8 hypothetical there the question of officers
9 checking cells as part of mental health or
10 suicide watches. I want to talk to you more
11 specifically about those in just a moment.

12 First, though, would you agree, sir,
13 that the most important responsibility of
14 correctional staff is to ensure the health and
15 safety of people incarcerated in the facility?

16 A The edict is care, custody and
17 control.

18 Q Right. So care is the first thing
19 you said; right?

20 A Yeah.

21 Q Meaning that -- protect and care
22 would seem to mean health and safety of the
23 person in your control; is that right?

24 A Yes.

25 Q All right. Sir, would you agree,

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1 are any number of factors that could come up
2 which might increase the risk of suicide in a
3 prison, would you agree, sir?

4 A Yes, but also in the community.

5 Q All right. So when you are working
6 in a correctional facility with your vast three
7 and a half decade experience, it sounds like you
8 understood that correctional staff working under
9 you, and yourself included, had a responsibility
10 to do whatever you could to prevent people from
11 harming themselves; is that correct, sir?

12 A Yes.

13 Q Now, I understand that mental health
14 staff are the ones who ultimately make the
15 decision about what mental health measures are
16 appropriate. Would you agree with that, sir?

17 A Correct.

18 Q But in terms of what goes on on the
19 housing areas, it is the officers who are
20 patrolling those areas; is that correct?

21 A Yes, that is their duty.

22 Q And the officer's job is in the event
23 of a risk of suicide for a prisoner is to carry
24 out whatever precautions have been directed by
25 supervisors or mental health staff; is that

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1 correct, sir?

2 A Yes.

3 Q And do I understand correctly that
4 the prison administration, including with
5 reference to the exhibit that we looked at a
6 short time ago, puts procedures in place that are
7 intended to make sure that officers do what is
8 necessary to prevent people from harming
9 themselves?

10 A Yes.

11 Q And you would expect correctional
12 officers to understand their obligations under
13 those policies; is that correct, sir?

14 A Yes.

15 Q And you would expect correctional
16 officers to follow all directives given to them
17 about how to carry out their responsibilities; is
18 that correct, sir?

19 A Yes.

20 Q And you would expect correctional
21 officers to do that without question; is that
22 correct, sir?

23 A Well, again, the -- one of the things
24 in a paramilitary organization, you follow
25 procedure, but that doesn't mean you can't

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1 question it afterwards.

2 Q Fair enough. But as an example, if
3 you told officers on a certain housing area, hey,
4 this guy is on regular watch, which means he has
5 got to be checked every 30 minutes, you wouldn't
6 expect officers to say no, I'm not doing that,
7 would you?

8 A Correct.

9 Q You would expect officers to do it,
10 and if they had a problem with it, they would
11 tell you about it afterwards; correct?

12 A Correct.

13 Q All right. I just mentioned the
14 phrase regular watch. Do you have a recollection
15 of the different levels of watches that were in
16 place or that were available in the correctional
17 facility back in 2018?

18 A Historically, there has been a
19 regular watch, I think they call it an acute
20 watch, and then there was a suicide watch, I
21 think, as I recall.

22 Q Okay. So my question, just to be
23 clear, was not intended as a quiz to see what you
24 remember, really, I just want to establish that
25 there are different levels and it sounds like,

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1 THE WITNESS: I'm trying to remember.

2 BY MR. FEINBERG:

3 Q Okay. Well, would you agree, sir,
4 that it is not a question of the officer getting
5 around to the check whenever the officer can, the
6 officer has got to do the 30-minute check; right?

7 A Yep.

8 Q Okay. In fact, actually, that is a
9 good point. I want to bring up just a couple of
10 exhibits which address the responsibilities of
11 officers under these different protocols. I'm
12 going to show you now Exhibit P-6. Do you have
13 P-6 in front of you, sir?

14 A Yes.

15 Q Scrolling down to Page 2, and let's
16 do this, sir: First, are you able to read the
17 text on your phone?

18 A I'm enlarging it.

19 Q Yeah. Okay. Could you do me a
20 favor, read the highlighted text to yourself and
21 let me know when you are finished.

22 A Okay.

23 Q So would you agree, sir, that what is
24 described for the level three watch is that there
25 should be six observations of a prisoner on this

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1 watch status every hour?

2 A Between the inmate minder and the
3 officer.

4 Q Yes, that is -- in fact, I'll break
5 it down, sir. The officers are required to see
6 the prisoner on a level three watch status once
7 every 30 minutes; correct?

8 A Yes.

9 Q So that is two per hour; correct?

10 A Yes.

11 Q And the inmate monitors are required
12 to see the prisoner on level three status every
13 15 minutes, so four per hour; is that correct?

14 A Correct.

15 MR. KOLANSKY: Objection. John,
16 would you establish, please, if you are going to
17 ask that question, I don't have an objection to
18 the overall question, but would you establish
19 that they see them at the same times as the
20 officers do as well or that they stagger them so
21 that they are on the ten and the 20 or -- because
22 you haven't established that.

23 You say six times an hour, but it
24 could be that inmates or guards interpret it as
25 on the 15 and the 45, as opposed to every 15

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1 minutes. Could you just discuss that, please?

2 BY MR. FEINBERG:

3 Q Mr. Mitchell, would you agree that
4 the person's cell, when they are on level three
5 status, that there will be six occasions with
6 someone looking into their cell to check on them
7 every hour?

8 A Yes.

9 Q All right. With regard to the inmate
10 monitors, which we just looked at with Exhibit 6,
11 I'll show you one other exhibit.

12 This is previously marked as Exhibit
13 P-7, watch and observation procedures. Do you
14 see Exhibit P-7 in front of you, sir?

15 A Yes.

16 Q I'm scrolling down to Page 5 and 6.
17 Let me just show you this highlighted text on the
18 bottom of page five. This references inmate
19 monitor forms. Do you see where my cursor is,
20 sir?

21 A Yes.

22 Q I'll scroll down now to the top of
23 Page 6, and read into the record the text next to
24 lowercase letter E, which states: It is the
25 module officer's responsibility to assure that

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1 inmate monitors are using IMFs, inmate monitor
2 forms correctly.

3 Sir, would you agree that that was a
4 well-understood duty for correctional officers
5 back in 2018?

6 A Yes.

7 Q So the responsibility of the inmate
8 monitor is to actually go to the cell and look
9 into it, would you agree; sir?

10 A Yes and no.

11 Q Why do you say that?

12 A Because the inmate may not be in the
13 cell.

14 Q Okay. Fair point. So the inmate
15 monitor has to get eyes on the inmate who is the
16 subject of the check; right?

17 A Correct.

18 Q All right. And so the purpose of
19 these forms, sir, is, can we agree, to make sure
20 that the person who is on that regular watch
21 check, the level three set of checks, is safe and
22 alive; correct?

23 A Yes.

24 Q All right. So obviously, if the
25 prisoner on level three status is walking around,

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1 then that can be noted by the inmate monitor;
2 correct?

3 A Yes.

4 Q Okay. Would you also agree, sir,
5 that it is the responsibility of the module
6 officer, meaning the officer working on the
7 housing block, to ensure that the inmate monitor
8 is doing his job?

9 A Yes.

10 Q So in other words, an inmate monitor
11 can't just -- strike that. If, in a hypothetical
12 example, an inmate monitor was literally sitting
13 on his bed in his cell and just filling out the
14 form without checking on the prisoner who is the
15 subject of the watch, that would be completely
16 improper for the inmate monitor; correct?

17 A Yes.

18 Q And it would be the officer's
19 responsibility to make sure that the inmate
20 monitor was doing his job; is that correct?

21 A Yes.

22 Q So, sir, in your position as the
23 deputy warden back in August of 2018, if you
24 directed placement on level three status, that
25 meant you expected officers to do their checks no

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1 more than every 30 minutes; is that correct?

2 A Yes.

3 Q And you directed that officers should
4 ensure that inmate monitors were doing their
5 checks at least once every 15 minutes; is that
6 correct?

7 A Per the procedure.

8 Q Yes. Okay. And the procedure which
9 we just described, which could be seeing the
10 person on the cell block or seeing the person in
11 their cell, et cetera, wherever the person could
12 be found; is that correct?

13 A Yes.

14 Q All right. In other words, someone
15 has eyes on that prisoner six times every hour;
16 is that correct?

17 A Yes.

18 Q And when you order people who are
19 working under your supervision to do that, your
20 expectation is it is going to be done; is that
21 correct?

22 A Yes.

23 Q If it is not done, they are violating
24 your order; is that correct?

25 A Violating policy.

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1 MR. KOLANSKY: Objection to the form.

2 BY MR. FEINBERG:

3 Q Okay. They are violating -- and that
4 was my next question. If it is not done, they
5 are violating the policy; is that correct?

6 A Yes.

7 Q And as we discussed, the policy is
8 present to help -- or it's aimed at, as far as
9 you understand, preserving the safety of people
10 incarcerated in the facility; is that correct?

11 A Yes.

12 Q So if you violate the policy -- when
13 I say you, I am talking generally, so if officers
14 violate the policy, they are placing, at risk,
15 the safety of the person they are supposed to be
16 protecting; is that correct?

17 MR. KOLANSKY: Objection. Calls for
18 a conclusion.

19 BY MR. FEINBERG:

20 Q You can answer, sir.

21 A Yes.

22 MR. FEINBERG: Okay. Let's go off
23 the record.

24 (Break.)

25 BY MR. FEINBERG:

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1 A Problems -- you have to -- there is
2 two different issues, inmates versus officers.

3 Q Okay. Well, I think you told me
4 before that officers were responsible for inmate
5 monitors, so let me ask it that way.

6 Did anyone ever raise with you any
7 questions or any concerns about officer's
8 supervision of inmate monitors?

9 A If there were problems with inmate
10 monitors, they were fired and other ones were
11 hired.

12 Q Okay. Meaning -- they, meaning the
13 inmate monitors; is that correct?

14 A Meaning the officers would fire the
15 inmate monitors and hire new monitors to replace
16 them.

17 Q Got it. So if I understand you
18 correctly then the responsibility to supervise
19 inmate monitors and to determine whether they
20 were doing their jobs was a responsibility
21 carried out by officers; is that correct?

22 A Correct.

23 Q So the question that I intended to
24 ask, and I acknowledge that maybe it was poorly
25 phrased, was from your perspective, as an

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1 that better than me.

2 Q All right. Well, let me ask you this
3 question: Do you remember ever -- do you
4 remember any suicide which led to a conclusion
5 that an officer had not properly conducted the
6 cell checks that were required under relevant
7 policies?

8 A No.

9 Q Let me ask you some more specific
10 questions about Mr. Freitag. I showed you, at
11 the beginning of the deposition, the e-mail that
12 Paul Lang sent to you and that you responded back
13 to him.

14 And in your e-mail to him, you
15 suggest that he should give you a call. Can I
16 assume that you did, in fact, speak with Mr.
17 Lang?

18 A Yes.

19 Q What do you remember Mr. Lang telling
20 you, if anything?

21 A As in the e-mail, he said he was
22 concerned about him and I said okay.

23 Q Do you remember knowing anything
24 about Mr. Freitag's case, his criminal case that
25 is, at that point in time?

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1 suicide attempts?

2 A No.

3 Q All right. Can I assume from the
4 e-mail -- strike that. Let me actually pull this
5 up. This is the e-mail that Dr. Cassidy sent to
6 the mental health staff that's been previously
7 marked as Exhibit P-24.

8 Now, I understand that Dr. Cassidy is
9 reporting something that you said to her, and you
10 didn't write this e-mail, but Dr. Cassidy
11 reports, as highlighted here on Exhibit P-24,
12 Deputy Warden Mitchell wanted him, referring to
13 Mr. Freitag, seen because he is somewhat older,
14 is here on serious charges, aggravated assault
15 and has sentencing coming up. Do you recall
16 saying any of those things to Dr. Cassidy?

17 A I probably did.

18 Q Okay. So is it fair to say, sir,
19 that when -- based even on the limited knowledge
20 that you may have had concerning Mr. Freitag's
21 charges and his demographic factors, you had some
22 reason to be concerned about him?

23 A I had concern because I had gotten
24 the call.

25 Q Okay. And once you get a concern

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1 like that communicated to you, sir, is it your
2 default reaction to inform the mental health
3 staff?

4 A It depends on where the call was
5 coming from initially and how much first-hand
6 knowledge I have, but ordinarily, I would
7 probably do the same thing.

8 Q Okay. In these circumstances,
9 someone told you there were concerns about mental
10 health, and can I assume, sir, you don't have
11 mental health training?

12 A Well, just basic training.

13 Q Okay, but you --

14 A Not a doctor.

15 Q You are not a clinician? You can't
16 make a mental health diagnosis; right?

17 A Yeah, I don't play one on Sunday.

18 Q Okay. All right. So in that case,
19 sir, if there were questions about mental health
20 status, it is -- naturally, you would defer those
21 questions to the mental health staff; is that
22 correct?

23 A Correct.

24 Q And can I assume, given your
25 administrative responsibilities, that you had

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1 case concerning a rather high-profile murder in
2 Bucks County; is that correct?

3 A Correct.

4 Q All right. But Mr. Freitag didn't
5 stand out in any way like Mr. DiNardo; is that
6 correct?

7 A No, sir.

8 Q Am I correct --

9 MR. KOLANSKY: Meaning yes, sir? He
10 asked you if he is correct. Is he correct? You
11 said no, sir and he asked --

12 THE WITNESS: Freitag didn't stand
13 out for me.

14 MR. KOLANSKY: Did not. Okay.

15 BY MR. FEINBERG:

16 Q So am I correct in understanding that
17 the first communication you would have had about
18 Mr. Freitag's sentencing was in this e-mail from
19 Exhibit 1 that I have now in front of you from
20 Ara, A-R-A, Kimbrough, K-I-M-B-R-O-U-G-H? Do you
21 see that, sir?

22 A Yes. Yes.

23 Q All right. So the --

24 A Ara Kimbrough is -- he did, and I
25 think still is the records office supervisor.

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1 Q All right. So you were -- so Mr.
2 Kimbrough sent that e-mail to you and also to
3 Assistant Warden Budd, B-U-D-D, noting received
4 six to 12 years for AA, meaning aggravated
5 assault, no misconducts or detainers. Can we
6 agree that e-mail was sent at 3:52 p.m.; right?

7 A Yes.

8 Q It looks like then that you forwarded
9 the e-mail to, as we have already established,
10 the case manger staff; is that correct?

11 A Yes.

12 Q And it looks like you jumped on it
13 pretty quickly and just did it three minutes
14 later at 3:55 p.m.; is that correct?

15 A Yes.

16 Q The text reads, unlock, my sure he is
17 on a watch. I think I have interpreted it, and I
18 want you to tell me if I am correct in that the
19 my was a typo?

20 A Yes.

21 Q What you intended to say was make
22 sure; correct?

23 A Correct.

24 Q All right. All right. So the
25 message that you communicated three minutes after

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1 you received the first mail was unlock, make sure
2 he is on a watch?

3 A Yes.

4 Q What did you -- for someone who has
5 not -- has not worked in the Bucks County
6 Correctional Facility, what were you
7 communicating with that e-mail, sir?

8 A The intent was for them to interview
9 and make a determination what level he should be
10 on. I don't make those determinations, just to
11 make sure that he was on a watch.

12 Q Okay. Now, when you said unlock, do
13 I understand correctly that different levels of
14 watch have different provisions concerning
15 whether the cell is locked?

16 A Yes, but in this case, he was already
17 unlocked. That was -- you know, that was -- you
18 know, I didn't expect this to be litigated in
19 this manner.

20 As you can see, it is close to 4:00
21 and I'm ready to leave, and in my mind, I was
22 saying the guy is already unlocked, to make sure
23 that he is on a watch and to evaluate.

24 They know the process, to go through
25 and interview and make the determination of what

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1 level it should be on.

2 Q Okay. And it looks like Mr. Metellus
3 then is the one who made the decision level
4 three; is that correct, sir?

5 A Yeah.

6 Q And I see that you were not copied on
7 the e-mail here, but it was sent to Brianne
8 Morrow, who is another case manager; is that
9 correct?

10 A Correct.

11 Q All right. And can I assume that --
12 well, strike that. So you are saying, sir, that
13 you didn't know what level of watch he would be
14 placed on?

15 A No.

16 Q And your interpretation is that
17 unlock meant that that was his status now --

18 A That was his current --

19 Q -- that he be placed on --

20 A That was his current status that I
21 was aware of.

22 (Court reporter interruption.)

23 BY MR. FEINBERG:

24 Q I apologize. I believe I may have
25 interrupted Mr. Mitchell, so let me try this

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1 again. Mr. Mitchell, bottom line is this: You
2 wanted to make sure that Mr. Freitag was on some
3 level of watch; is that correct?

4 A Yes.

5 Q And if someone directed that Mr.
6 Freitag would be placed on a watch level, your
7 expectation is that officers were going to comply
8 with the directives of that watch level; is that
9 correct?

10 A Correct.

11 Q So if someone made the decision that
12 he should be placed on level three watch, you
13 would expect, as we have described, that officers
14 would see him within every 30 minutes; is that
15 correct?

16 A Whatever the level called for.

17 Q Okay. And well, since we are dealing
18 with level three here, that is what you would
19 expect; is that correct?

20 A Yes.

21 Q And you would expect, with level
22 three, that inmate monitors would be seeing Mr.
23 Freitag every 15 minutes; is that correct?

24 A Yes.

25 Q Did you think there was anything else

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1 you needed to do besides sending this e-mail?

2 A No.

3 Q And, sir, I'm not suggesting that,
4 I'm just asking. Can I assume that as the deputy
5 warden, if you send a directive to people
6 reporting to you as their supervisor, that they
7 will do what you tell them; right?

8 A Yes.

9 Q All right. Mr. Freitag's suicide was
10 the next morning, Saturday, August 25th. How did
11 you hear about it?

12 A You said it was Saturday?

13 Q Correct.

14 A I probably got a phone call.

15 Q Okay. Do you remember going into the
16 facility? You have already told me that you were
17 on the block; is that right?

18 A Yeah. I think I was.

19 Q I'll show you one document just to
20 refresh your recollection. This is Exhibit 13,
21 report prepared by Mr. Bochenek, and the text
22 here reads, this investigator, meaning Mr.
23 Bochenek, Director Christopher Pirolli, Warden
24 Paul Lagana, Deputy Warden Cliff Mitchell,
25 Assistant Warden Lil Budd, CMHS Director Abbey

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1 Q And my understanding then is that the
2 presumption was any time someone comes back from
3 court and they have got a state sentence, they
4 will be placed on a level two precaution. Do you
5 recall discussion over that, sir?

6 A Yes.

7 Q Did you offer any opinions or any
8 thoughts as part of that conversation?

9 A I agreed with it, but there were
10 other issues, aside from the mortality issues
11 versus the state commitments that I was concerned
12 with -- you know, with the records office and so
13 forth and so on.

14 Q What were those issues that you were
15 concerned about, sir?

16 A Well, again, you know, sometimes
17 there were mitigating circumstances with regard
18 to the sentence, the length of the sentence, the
19 individual who received the sentence, you know,
20 to -- I'll give you a candid example.

21 Q Before you do that, sir, can I make
22 sure I understand what you are saying first?

23 A Yes.

24 Q Yeah. My question for you is this:
25 First, it sounds like what you are describing,

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1 A Yes. From a general perspective with
2 regard to, again, the totality of the institution
3 and the occupants of the institution.

4 Q Okay. All right. That is helpful
5 information to have, sir. The question I
6 intended to ask you, and this was a good
7 digression though, but the question I intended to
8 ask was: Did you have any other concerns about
9 the way Mr. Freitag's case was handled that were
10 raised in the mortality review?

11 A Well, I guess the one issue was --
12 that I was concerned with was the HIPAA.

13 Q How do you mean?

14 A Not having all the information that
15 might have helped make a different decision one
16 way or the other about anything. It wasn't just
17 him.

18 If you don't have all the information
19 at the time to make an intelligent decision on
20 any matters, it makes you handcuffed. You are
21 kind of handcuffed.

22 Q Oh, okay. So are you referring to
23 the fact that the correctional staff who made the
24 decision to place Mr. Freitag on level three did
25 not have all the information about his background

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1 in their possession?

2 A Well, I didn't.

3 Q Right. And --

4 A And I was the one referring it to
5 them from the standpoint of, you know, you talked
6 about his mental health and the suicides.

7 Q Right. So you didn't. And
8 obviously, we, as lawyers in this case, we have
9 access to all of the information, which you did
10 not have at that time. So just to confirm, you
11 didn't know that he had two prior suicide
12 attempts; is that correct?

13 A Correct.

14 Q You did not know that one of his
15 suicide attempts was what, in fact, led to his
16 arrest, prosecution, conviction and
17 incarceration; is that correct?

18 A Correct.

19 MR. KOLANSKY: Objection to form.

20 BY MR. FEINBERG:

21 Q You did not know that he had been
22 expressing, for weeks, anxiety about his
23 sentencing; is that correct?

24 A No.

25 Q You did not know anything about what

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1 his expectations were going into sentencing; is
2 that correct?

3 A No.

4 Q And you did not know, given your
5 answer to that last question, that a six to 12
6 year sentence for his crimes was utterly shocking
7 to Mr. Freitag? You had no idea; is that
8 correct?

9 A It may have been shocking to him, but
10 not to me.

11 Q Okay. Well, you were not in any
12 position to know how he would react because you
13 hadn't spoken to him; is that correct?

14 A Correct.

15 Q And can I assume that no one on the
16 correctional side had spoken to Mr. Freitag about
17 the mental health impact of his sentencing?

18 A I don't know.

19 Q Okay. Now, my understanding, sir, is
20 that at that time in 2018, mental health staff
21 were not available in the facility when people
22 came back from court; is that correct, sir?

23 A It depends on what time they came
24 back from court.

25 Q Okay. Well, I'll represent to you,

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1 now and that is my question.

2 BY MR. FEINBERG:

3 Q Mr. Mitchell, back in August of 2018,
4 do you know -- do you remember when mental health
5 staff left the facility?

6 A I had no recall the records of their
7 attendance, attendance logs and so forth and so
8 on. I don't know the specific answer to the
9 question.

10 Q Can we assume though that if mental
11 health staff were in the facility when people
12 returned from custody, that instead of you asking
13 case managers, without mental health training, to
14 make these decisions, you would have done
15 something else, namely reaching out to mental
16 health staff?

17 MR. OSBORNE: Object to the form.

18 BY MR. FEINBERG:

19 Q Does that sound right, sir?

20 A Generally, yes.

21 Q Okay. And, again, my question is not
22 aimed at quizzing you, I'm just trying to make a
23 logical conclusion here.

24 We went through a whole series of
25 questions about information that neither you, nor

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1 is some kind of monthly meeting between medical
2 and the director and so forth and so on and it
3 may have come out of that.

4 Q Okay. Would --

5 MR. KOLANSKY: When counsel asks if
6 you recollect, that is a yes or no question. It
7 is not a "it might have" come out of whatever.

8 THE WITNESS: Okay.

9 BY MR. FEINBERG:

10 Q Yeah. And that is -- well, my next
11 question for you, sir, is would you attend those
12 monthly meetings?

13 A No. I have.

14 Q All right. So then the more specific
15 question is: Do you remember being in attendance
16 at a meeting where this specific issue was
17 addressed?

18 A No.

19 Q All right. Can we assume, sir, based
20 on your previous deposition testimony, that if
21 mental health staff were regularly in the
22 building until 5 or 5:30, in Mr. Freitag's
23 situation, you would have contacted mental health
24 staff once he got back to the building?

25 MR. KOLANSKY: Objection. Calls for

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1 speculation.

2 BY MR. FEINBERG:

3 Q You can answer, sir.

4 A Yes.

5 Q I mean, that is completely consistent
6 with what you just said, right, that if there
7 were mental health concerns that you were not
8 prepared to address, given your base of
9 knowledge, they would naturally be the people to
10 address the issues; is that correct, sir?

11 A Correct.

12 Q All right. One -- I asked you at the
13 beginning, sir, about the site visit -- strike
14 that.

15 In October of 2019, to confirm, you
16 had not a single contact with anyone in the
17 correctional facility following your retirement;
18 is that correct?

19 A That is correct.

20 Q Didn't speak to a single person who
21 worked there about things that were happening
22 there?

23 A No.

24 Q So you have no idea what may have
25 happened on any site visit by a mental health

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1 A No.

2 Q All right. Can we agree that the
3 text shows it is dated August 25, 2018, refers to
4 Charles Freitag, and it notes LVL, level three
5 mental health watch; is that correct, sir?

6 A Yes.

7 Q So can we agree that as of the
8 morning of August 25, 2018, Mr. Freitag -- strike
9 that.

10 As of the morning of August 25, 2018,
11 the module officers, bravo module, had been
12 alerted to the fact that Mr. Freitag was on a
13 level three watch; is that correct, sir?

14 A Yes.

15 Q All right. The next document I want
16 to show you -- I assume you have not watched any
17 video from that morning about what happened on
18 that block?

19 A No.

20 Q All right. I am showing you now
21 Exhibit 11, which is a report prepared by a
22 Daniel Onisick, O-N-I-S-I-C-K. Do you know Mr.
23 Onisick?

24 A Yes.

25 Q Mr. Onisick, the second page of his

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1 report, do you see here a timeline with bullet
2 points that I'm highlighting?

3 A Yes.

4 Q All right. Would you agree that
5 there is a reference to a check of cell B3, where
6 Mr. Freitag was, at 10:21. Do you see that, sir?

7 A Yes.

8 Q And do you see that the next thing
9 observed and -- strike that. Before I go on, let
10 me know -- I'm saving you the time of reviewing
11 the entire document, that what is reported here
12 is the officer's watched surveillance video from
13 that unit and then made a time record of what
14 they observed. Do you understand what I have
15 just described?

16 A Yes. Somebody watched the tape and
17 wrote down times.

18 Q Okay. Great. We are on the same
19 page. It looks like the next thing that happens
20 after the cell check on 10:21 is at 10:55, so 34
21 minutes and 11 seconds later, an inmate looked in
22 Mr. Freitag's cell and alerted correctional
23 officers to what happened. Do you see that, sir?

24 A Yes.

25 Q Can we agree that that 34-minute

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1 period is longer than what officers are required
2 to do on the level three watch?

3 A Yes.

4 Q All right. Now, you told me before,
5 in no uncertain terms, that level three -- the
6 policies regarding level three watch are not just
7 like do your best? It is a directive; right?

8 A Yes.

9 Q I want to show you some deposition
10 testimony from one of the officers working on
11 this block. His name is James Young. Do you
12 remember any interactions with Officer James
13 Young?

14 A No.

15 MR. FEINBERG: Bear with me for a
16 moment. This will be Mr. Young's deposition
17 testimony for counsel's benefit on Page 78. Sir,
18 I'm going to ask you to read --

19 MR. KOLANSKY: Jon, enlarge that,
20 please.

21 BY MR. FEINBERG:

22 Q Yeah. Let's do this, let's see -- I
23 want to make sure I am in the right place. Sir,
24 I'm going to ask you read the highlighted text
25 here. Let me know when you are finished, and I

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1 will move it over to the next page.

2 And before you do that, sir, let me
3 note, so this is my questions of Mr. Young and
4 Mr. Young giving me answers. The A is his answer
5 and the Q is my question.

6 A I'm familiar with them, familiar with
7 pages like this.

8 Q Okay. All right. Fair enough. Have
9 you read the text that I highlighted?

10 A Yes.

11 Q All right. I'll scroll over to the
12 next page, and I'll ask you to read down to here.

13 A Okay.

14 Q All right. So would you agree --
15 obviously, the document speaks for itself, but in
16 sum and substance, would you agree Officer Young
17 says, it is perfectly fine to do the level three
18 watch by waiting 34 minutes between checks. That
19 is what he says; right?

20 A On the column previous where it says
21 the spirit of the policy, that is not the policy.

22 Q All right. Yeah. So would you agree
23 that he didn't comply with the policy; is that
24 right?

25 MR. KOLANSKY: Objection to the form.

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1 BY MR. FEINBERG:

2 Q Is that correct, sir?

3 A Not in my view.

4 Q All right. Did you -- in fact, let
5 me -- I do want to show you some video, sir.

6 What I'll be showing -- and, again, just to
7 confirm, sir, you told me you have not seen any
8 of this video; is that correct?

9 A No.

10 Q All right.

11 A Not that I recall.

12 Q All right. I'm putting up on the
13 screen now -- for counsel's benefit, this is the
14 portion of the video of the B module from August
15 25, 2018 starting at 10:13 a.m.

16 I'm scrolling forward to seven
17 minutes and 29 seconds. So, sir, I'm moving my
18 cursor in front of what I believe to be cell
19 three where Mr. Freitag was housed. Do you see
20 where I am doing that, sir?

21 A Yeah. okay. It's by the stairwell.

22 Q Yeah. Okay. So I'm going to hit
23 play, and in the next ten seconds, you will see
24 an officer conduct a check in that cell.

25 All right. I'll stop it there at

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1 7:37. Would you agree that it looks like an
2 officer looked into Mr. Freitag's cell. That is
3 obvious; right?

4 A Yes.

5 Q My understanding is that that is
6 Officer Murphy, who I believe is still here with
7 us, and we will get his testimony later, and my
8 understanding is that this also -- if you add --
9 we are seven minutes and 37 seconds in from a
10 video that started at 10:13 a.m., we are right at
11 10:21 a.m.; okay? Do you agree with me, sir?

12 A Yes, appears so.

13 Q All right. So I want to fast forward
14 all the way to 10:56 at 41 seconds in -- pardon
15 me, 41 -- we will start at 41:35.

16 I'll ask you to watch that same
17 location, cell three, and I will represent to you
18 that because we are 41 minutes in from a video
19 that started at 10:13, we are at that 10:55 --
20 10:54, 10:55.

21 You see there is a prisoner walking
22 towards Mr. Freitag's cell, he looks in, and then
23 it looks like he says something to the officers
24 at the booth. Would you agree with me, sir?

25 A Yes.

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1 Q All right. I'll represent to you
2 with that testimony from Officer Moody and
3 Officer Young, that this is when Mr. Freitag was
4 discovered.

5 The person in white, who was Mr.
6 Monachelli made the -- alerted to them of what
7 was happening at 10:55, 34 minutes after the last
8 check. Do you understand everything I have laid
9 out so far, sir?

10 A Yes.

11 Q All right. Do you have any idea what
12 the officers were doing in that time period?
13 Since you watched the video, I assume the answer
14 is no. Can we agree on that, sir?

15 A Yes.

16 Q All right. I want to go back to the
17 beginning where we watched -- we were seven and a
18 half minutes in. I'm actually right at the
19 moment there. We are at 7:43 with Officer Murphy
20 standing by the door.

21 Do you see here where I am pointing
22 my cursor, there is someone sitting at the
23 podium?

24 A Yes, stand --

25 Q That person -- I am sorry, say that

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1 again, please.

2 A Standing, I guess.

3 Q Yeah. Okay. Yeah. He is present at
4 the podium. My understanding --

5 MR. KOLANSKY: For the record, on the
6 inside of the podium.

7 MR. FEINBERG: I'm sorry?

8 MR. KOLANSKY: For the record, on the
9 inside of the podium; correct?

10 MR. FEINBERG: Yeah. Sure.

11 MR. KOLANSKY: Okay.

12 BY MR. FEINBERG:

13 Q So that is Mr. Young, Correctional
14 Officer Young. He identified himself as the
15 person wearing the hat.

16 I'm going to play this on fast
17 forward at -- I think we can do 30 times the
18 speed, and I'll ask you just to focus on that
19 podium and just keep an eye on Officer Young. At
20 11:29, so four minutes have gone by, he walked
21 out. Would you agree?

22 A Yeah. I don't see him there.

23 Q Yeah. Okay. See there he is. I
24 backed it up. We are now at 11:16. He is
25 walking off the block. Would you agree?

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1 A No.

2 Q Oh, can you tell where he is going?

3 A It appears as if he is walking
4 towards the alcove door to the yard.

5 Q Got it. Okay. So I'll fast forward,
6 he come back pretty shortly. There is another
7 officer on the block there at 12:29. All right.
8 At 15:35, Mr. Young is back. So would you agree
9 he has been gone for four minutes, give or take?

10 A Yes.

11 Q All right. Now, I'll represent to
12 you, sir, my -- and I'll play this on fast action
13 here, at 30 times the speed, that Mr. Young sits
14 at that booth from all the way up to the time
15 that Mr. Freitag is discovered.

16 I'll ask you to keep your eye on that
17 booth. My question will be, do you agree that he
18 is basically sitting there the entire time?

19 MR. KOLANSKY: Standing.

20 BY MR. FEINBERG:

21 Q Well, all right. Sitting -- he is
22 present there for the entire time? Agreed, sir?
23 Well, that will be my question.

24 A It appears so, and other people
25 standing behind it also.

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1 Q All right. We have gotten to the
2 point 41 minutes in where Mr. Freitag is
3 discovered.

4 Did you agree with what I
5 represented, that other than the four minutes or
6 so where Mr. Young left the podium, he was there
7 for that entire 34-minute period sitting or
8 standing behind the podium?

9 A Appears so.

10 Q Yeah. Do you know of any reason or
11 did you see any reason why Officer Young would
12 not have been able to check in Mr. Freitag's cell
13 in that time period?

14 A I don't know.

15 Q Do you know of any reason why Officer
16 Young did not comply with the level three watch
17 as you have described was required?

18 MR. KOLANSKY: Objection to the form
19 of the question.

20 BY MR. FEINBERG:

21 Q You can answer.

22 A I don't know.

23 Q All right. Do you know whether --
24 you told me before that no one asked you
25 questions about this before, and you really had

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1 no idea about whether checks were taking place.

2 Did I understand your previous testimony

3 correctly?

4 A Can you rephrase that question?

5 Q Yeah. Sure. Let me say it a

6 different way. Can we just agree, sir, that

7 there -- this is a clear example of Officer Young

8 not complying with his responsibilities under the

9 suicide watch protocol?

10 MR. KOLANSKY: Objection.

11 THE WITNESS: Yes.

12 BY MR. FEINBERG:

13 Q You can answer.

14 A It appears so.

15 Q All right. Which is something
16 obviously that, as you said, would violate rules,
17 that to your understanding, are intended to
18 protect people in the facility; is that correct?

19 A Yes.

20 Q All right. I'm going to go back to
21 the document that I showed you before, the inmate
22 monitor form. I'm sorry I don't have it in front
23 of you. This is Exhibit 9.

24 Are these documents things that you
25 would look at with any regular basis during your

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1 time there, sir?

2 A Just while touring.

3 Q Okay. Then in that case, let me take
4 20 seconds just to explain. There are
5 abbreviations that are written all down the form
6 there, and based on the previous testimony, our
7 understanding is that every notation from Mr.
8 Freitag on this document said that he was L, in
9 his cell and F, sleeping. Do you see that, sir?

10 A Yes.

11 Q All right. So now I'm showing you
12 the morning -- so I have scrolled over to the
13 second page. And do you see here from 8:00 down,
14 all the way through 10:45, every reference says
15 LF, Mr. Freitag in his cell sleeping; is that
16 correct?

17 A Yep.

18 Q We also see the inmate monitor's
19 initials HC, and we know from previous testimony
20 that that refers to a person named Hugh Caldwell.

21 I don't expect you to know him, but I
22 just mention his name because I'm going to ask
23 you more about him later. Do you understand what
24 I have described so far for this form, sir?

25 A Yes.

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1 Q All right. I'm going to ask you
2 specifically about 9:15. There is a reference
3 there that says Mr. Freitag is in his cell
4 sleeping. Do you see that, sir?

5 A Hold on a minute.

6 Q Sorry. Let me go back.

7 A Yeah. You got it highlighted there.

8 Q I spoke over you, and I am sorry.
9 You see that; is that correct?

10 A Yes.

11 Q All right. I am going to pull
12 another video out. This is a video from 8:13
13 a.m. For counsel's benefit, this is Bates
14 stamped 460. All right, sir.

15 So this starts at 8:13 a.m, and I'm
16 going all the way forward to about 59 minutes in,
17 58:44.

18 Do you see the man in the uniform?
19 He is white and he appears to have light gray
20 hair. Do you see --

21 A I see the cursor. I see the cursor.

22 Q Okay. That is Mr. Freitag, I'll
23 represent that to you. And I'm going to play
24 this here, so we know -- I'm sorry.

25 By the way we are starting 8:13 a.m.,

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1 58 minutes in, that means we are at 9:11 or 9:12
2 a.m. that morning. Do you understand what I have
3 outlined, sir?

4 A Yeah. You see -- you are basically
5 saying he is walking there at 9:15 --

6 Q Right.

7 A -- but he is supposed to be laying on
8 the bed.

9 Q Yeah. So I'll just play this through
10 on quick action here again, 30 times the speed.
11 The video ends, and just for the sake of
12 completeness, I'll show you the beginning of the
13 next video at 9:13 a.m.

14 For counsel's benefit, this is Bates
15 stamped 441. I got the wrong one. Sorry.
16 Sorry. I keep doing the wrong one. Let me get
17 rid of that. There it is. All right, sir.

18 So now we are starting at 9:13 and
19 there is Freitag again. I'll fast forward. I've
20 gone two minutes and 20 seconds in, so we are now
21 at 9:17 or 9:18. Did you see him walk into his
22 cell?

23 A Yeah. He went -- that was the med
24 cart.

25 Q Yeah. Okay. So what you saw was Mr.

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1 Freitag waiting in line for medications at 9:15
2 a.m.; is that correct?

3 A Yes.

4 Q So can we agree, perhaps this is
5 obvious, but let's put it on the record, that
6 this statement that Mr. Freitag was sleeping in
7 his cell at 9:15 a.m. is false?

8 A Yes.

9 Q All right. I'm going to spare you
10 the time of watching the entire video again to
11 show you that there were no apparent inmate
12 monitor observations of Mr. Freitag in his cell.

13 Instead, I will show you Exhibit 10
14 and just allow you to read the text. Exhibit 10,
15 for your reference, is Mr. Bochenek's report from
16 October of 2019, so 14 months later, and do you
17 see where my cursor is in the middle of this page
18 and I've highlighted some text?

19 A Yes.

20 Q Could you please read that
21 highlighted text to yourself and let me know when
22 you are finished?

23 And let me also note, before you do
24 that, sir, there is a long black line through
25 this document.

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1 A Yeah.

2 Q I don't know what that is. That is
3 how this was presented to me. So I will ask you
4 to do your best to read around that and let me
5 know when you finished reading this highlighted
6 text.

7 A Okay.

8 Q So the one sentence I'll highlight
9 for you, sir, is in reviewing the video, there
10 was no inmate monitor observed checking on the
11 inmate. Do you see that, sir?

12 A Yes.

13 Q So can we agree, going back to
14 Exhibit 9, that all of these references from the
15 inmate monitor, Mr. Caldwell, purporting to show
16 that Mr. Freitag was sleeping in his cell are
17 false statements?

18 MR. KOLANSKY: Objection to the form.
19 You can answer.

20 BY MR. FEINBERG:

21 Q Would you agree, sir?

22 A Yeah. It appears that way.

23 Q Okay. The last point on this, sir.
24 I showed -- everything that I have just shown
25 you, I showed to Officer Young, and I asked him

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1 whether he had done his job of supervising the
2 inmate monitor properly.

3 And I'm going to ask you to read his
4 deposition testimony, and then ultimately, I'm
5 going to ask you whether you agree with his
6 assessment.

7 I'm going to ask you to read -- it is
8 a few pages, but I think it will go quickly.
9 Let's start at Page 105, Line 10. I'll highlight
10 this text.

11 Please read that page, let me know
12 when you are finished, I'll move to the next
13 page.

14 A I don't have anything on my screen.

15 Q Oh, I'm sorry. There. Do you have
16 it now?

17 A Yeah.

18 Q Okay. Go ahead. Read that text, let
19 me know when you are done.

20 A Does that end with the actual making
21 on that side?

22 Q No. I am going -- that is why I have
23 highlighted. Now I'm asking you to read --
24 because I have to scroll over, sir, so I'm going
25 to -- are you able to see that text? Is that

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1 large enough?

2 A I'm trying.

3 Q How about now?

4 A Yeah. I'm good. I'm good.

5 Q Okay. So read that page, please.

6 A Okay.

7 Q Let's read Page 106 now. Oh, yeah,
8 107, I apologize.

9 A Okay.

10 Q Now I'm showing you just the first
11 part of 108. I'll highlight what I'm asking you
12 to look at.

13 A Okay.

14 Q Obviously, from this testimony, Mr.
15 Young had no idea whether Mr. Caldwell, the
16 inmate monitor, was looking in Mr. Freitag's
17 cell; agreed?

18 A Yes.

19 Q Mr. Young also -- pardon me. Bear
20 with me for one second. Well, let me ask it this
21 way: Did Officer Young do his job in compliance
22 with the level three directive, sir?

23 MR. KOLANSKY: Objection.

24 THE WITNESS: Doesn't appear so.

25 BY MR. FEINBERG:

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1 Q All right. In fact, this appears
2 like this is a serious violation of the
3 directive, would you agree?

4 MR. KOLANSKY: Objection. Calls for
5 a conclusion.

6 BY MR. FEINBERG:

7 Q You can answer.

8 A It appears so.

9 Q Can I assume -- well, I'll represent
10 to you, sir, that when I asked Mr. Young about
11 these issues on -- whenever we did this
12 deposition, it was in late December, this was the
13 first time anyone had raised these questions with
14 him.

15 Do you know whether anyone asked
16 questions about what happened following Mr.
17 Freitag's suicide concerning whether officers
18 complied with their responsibilities?

19 A I can't assume.

20 Q Okay. So you don't know; is that
21 right?

22 A I don't know for a fact.

23 Q All right. I'll show you one more
24 exhibit, sir. This will be the last document I
25 show you. Exhibit 27, this is a newly marked

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1 showed you, you saw -- you heard Officer Young's
2 testimony about his understanding and his
3 obligations, you saw the inmate monitor form
4 purporting to show observations which never
5 happened, and you read Mr. Caldwell's statement,
6 what would you do?

7 MR. KOLANSKY: Calls for speculation.
8 Objection.

9 BY MR. FEINBERG:

10 Q And let me note that objection. Mr.
11 Mitchell, you worked for the prison for 35 and a
12 half years. You put in your time. You put in
13 your service. You strike me as a person who
14 understood how to supervise.

15 My question is: If you learned this
16 information back then, based on all of that, what
17 would you have done?

18 MR. KOLANSKY: Same objection.

19 THE WITNESS: Can I answer now?

20 BY MR. FEINBERG:

21 Q Please.

22 A Well, obviously, there would have to
23 be an evaluation of the information in the video
24 as seen, but definitely, there would have to be
25 an intensive effort to retrain and follow up to

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1 one presented facts like these to you during your
2 time there as deputy warden; is that correct?

3 A No, sir.

4 MR. FEINBERG: Let's go off the
5 record for just a moment.

6 (Break.)

7 BY MR. FEINBERG:

8 Q Okay. Mr. Mitchell, we are back on
9 the record after a short break. Did you realize
10 during that break that any of your previous
11 testimony was incorrect or incomplete?

12 A No, sir.

13 Q All right. Just a couple of very --
14 of questions to wrap up. First, given everything
15 that we discussed, sir, concerning compliance
16 with directives under the level three watch, do
17 you have any regrets about the way the county or
18 its officers handled this situation concerning
19 Mr. Freitag?

20 A That it was unfortunate.

21 Q Okay. When you say that was, what is
22 the that you are referring to?

23 A No, I said it was unfortunate.

24 Q All right. Unfortunate in the way
25 that the officers conducted themselves complying

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1 with the level three watch, is that what you are
2 saying?

3 MR. KOLANSKY: Objection.

4 BY MR. FEINBERG:

5 Q Is that a yes?

6 A Yes.

7 Q Yeah. And not only the officers, but
8 in terms of the officer's supervision of the
9 inmate monitors; is that correct, sir?

10 A Yes.

11 Q All right. So that covers it from my
12 questions. I've noted that throughout the
13 deposition, you appear to have been taking notes;
14 is that correct, sir?

15 A That is what I do.

16 Q Yeah. Okay. And that's -- it's not
17 a critique. Notes taken during the course of a
18 deposition are discoverable information, so I'm
19 going to ask you on the record to save those
20 notes, provide them to your counsel, Mr.
21 Kolansky, and I'll discuss with Mr. Kolansky how
22 to handle those notes. Understood, sir?

23 A Yeah. Sure.

24 Q All right.

25 A A lot of doodling on them.